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Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Nora Jean Dunaway, and Coalition on
Homelessness,

Plaintiffs,

vs.

City and County of San Francisco,

Defendants.

Case No. 08-1715

**DECLARATION OF JAMES M.
EMERY**

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DECLARATION OF JAMES M. EMERY

I, James M. Emery, hereby declare:

1. I am a member of the bar of the state of California and counsel of record for defendant City and County of San Francisco in this action.

2. Attached hereto as Exhibit A is a true and correct copy of the San Francisco Ordinance entitled "Standard of Care for City Shelters," which Mayor Newsom signed into law on March 28, 2008.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed April 1, 2008 in San Francisco, California.

Dated: April 1, 2008

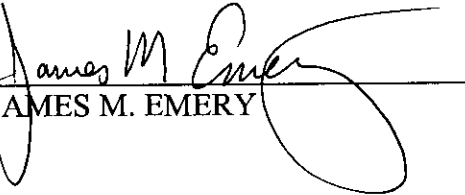
By: 
JAMES M. EMERY

EXHIBIT A

FILE NO. 071518

ORDINANCE NO.

1 [Standards of Care for City Shelters.]

2

3 Ordinance amending the San Francisco Administrative Code by adding a new Article

4 13 to Chapter 20 to: 1) mandate certain provisions in all contracts for City funded

5 shelters, 2) require the City to take corrective enforcement measures against City-

6 funded shelter contractors who fail to comply with contractual provisions that this

7 Article requires; 3) require the Shelter Monitoring Committee to investigate complaints

8 against City funded-shelters, and 4) require the Director of the Department of Public

9 Health to determine if the imposition of liquidated damages is warranted against

10 shelters who fail to comply with a corrective action plan.

11 Note: Additions are single-underline italics Times New Roman;

12 deletions are ~~strikethrough italics Times New Roman~~.

13 Board amendment additions are double underlined.

14 Board amendment deletions are ~~strikethrough-normal~~.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. The San Francisco Administrative Code is hereby amended by adding a

17 new Article 13 to Chapter 20 to read as follows:

18 Chapter 20 – Standard of Care for City Shelters

19 SEC.20.400. FINDINGS. The Board of Supervisors finds and declares the following:

20 (a) In 2004, the Board of Supervisors created the Shelter Monitoring Committee that is

21 required to provide the Mayor, the Board of Supervisors, and others with accurate and comprehensive

22 information about the conditions in and operations of shelters funded by the City.

23 (b) After conducting numerous site visits of City-funded shelters and after investigating

24 many complaints it received from shelter clients, the Shelter Monitoring Committee found that the

25 City's shelter system lacks comprehensive standards of care to be provided to clients utilizing shelter

services.

Supervisor Ammiano, Mirkarimi, Peskin, Daly, Maxwell, Sandoval
BOARD OF SUPERVISORS

1 (c) In order to ensure that all City-funded shelter operators meet minimum standards of
2 care in the shelter system, and that all shelter clients are treated with dignity and respect and are
3 provided with a clean, healthy, and safe shelter stay, the Board of Supervisors hereby adopts the
4 following contractual requirements that apply to all shelter operators in San Francisco.

5 SEC. 20.401. DEFINITIONS. For the purposes of this Chapter, the following definitions shall
6 apply to the terms used herein.

7 (a) "City" means the City and County of San Francisco, department that contracts for
8 services at a particular shelter.

9 (b) "Contract monitor" means the City employee who monitors the shelter operator's
10 compliance with the contract for shelter services.

11 (c) "Director" means the Director of the City department that oversees the contract for
12 City-funded shelter services.

13 (d) "Shelter" means a facility, including a resource center, operating under a contract with
14 the City, to provide temporary emergency shelter services for homeless single adults or families.

15 (e) "Shelter operator" means the operator of a shelter.

16 SEC. 20.402. PURPOSE. The purpose of this Chapter is to establish standards of care
17 ("shelter operating standards") that the City must include in contracts with shelters and to ensure that
18 the City takes corrective enforcement measures against shelter operators who fail to comply with
19 shelter operating standards.

20 SEC. 20.403. CITY REQUIREMENTS. The City shall provide the following shelter services,
21 consistent with this Article:

22 (a) Ensure 24-hour client access to a shelter in order to make shelter reservations; and
23 provide on-site shelter reservations for current shelter clients, and
24
25

1 (b) Provide at least one 24-hour emergency drop-in center, that provides shelter
2 reservations, mental health services, medical services, and transportation to available off-site
3 services and program; and

4 (c) Deploy a roving maintenance person to provide maintenance support to all
5 shelters.

6 SEC. 20.404. CONTRACT REQUIREMENTS.

7 (a) All contracts between the City and shelter operators shall include provisions that
8 require shelter operators to:

9 (1) treat all shelter clients equally, with respect and dignity;

10 (2) provide shelter services in an environment that is safe and free of physical violence; by
11 ensuring that safety protocols are in place that include training to shelter staff regarding de-
12 escalation techniques;

13 (3) provide soap, and hand dryers or towels to shelter clients and staff in each
14 bathroom, provide toilet paper in each bathroom stall, paper towels or hand towels, hand
15 sanitizers, and at least one bath-size (24"x48") towel to shelter clients and staff in each
16 bathroom; if hand dryers are currently installed they shall be maintained in proper working
17 condition; in addition, shelters shall provide toilet paper in each bathroom stall and hire
18 janitorial staff to clean the shelters on a daily basis;

19 (4) provide feminine hygiene and incontinence supplies upon request;

20 (5) comply with current City policy set forth in the San Francisco Environment Code,
21 including the requirements set forth in Chapter 23 (the Integrated Pest Management Code) and
22 Chapter 32 (the Environmentally Preferable Purchasing Ordinance) to ensure that shelter operators
23 use products that are least harmful to shelter clients, staff, and the environment;

1 (6) ensure that first aid kits, CPR masks, and disposable gloves are available to staff at all
 2 times and make Automatic External Defibrillators (AED) available to staff in compliance with all
 3 regulatory requirements of state and local law relating to the use and maintenance of AEDs;

4 (7) supply shelter clients with fresh cold or room temperature drinking water at all times
 5 during normal working/operating hours;

6 (8) provide shelter services in compliance with the Americans with Disabilities Act (ADA),
 7 including but not limited to:

8 (i) appropriate and secure storage of medication, and;

9 (ii) reasonable accommodations for meals; the provision of accessible
 10 sleeping, bathing and toileting facilities in previously designated ADA compliant shelters.
 11 Sleeping areas designated as accessible shall comply with federal and state law requiring a
 12 minimum of 36 inches between sleeping units and a sleeping surface height between 17-19
 13 inches above the finished floor. In consultation with the contracting City department, and
 14 based on a history of previous usage, shelter operators shall designate an adequate number
 15 of accessible sleeping units to meet the needs of shelter clients requiring such facilities due to
 16 a mobility disability; and

17 (iii) reasonable modifications to shelter policies, practices, and procedures.

18 (9) engage a nutritionist, who shall develop all meal plans, including meal plans for
 19 children and pregnant women, and post menus on a daily basis;

20 (10) make dietary modifications to accommodate requests from clients based on religious
 21 beliefs and practices; health, or disability reasons;

22 (11) prohibit all smoking in shelters, and within 20 feet of a shelter entrance and
 23 children's play area; provide a smoke-free environment for all shelter clients and prohibit
 24 smoking within 20 feet of a children's play area;

1 (12) provide shelter clients with one clean blanket, two clean sheets, and one pillow enclosed
2 in a plastic or vinyl sleeve with a clean pillowcase; sheets shall be cleaned at least once per week
3 and upon client turnover;

4 (13) make the shelter facility available to shelter clients for sleeping at least 8 hours per
5 night;

6 (14) provide daytime access to beds in all 24-hour shelters;

7 (15) provide shelter clients with ~~pest-free~~, secure property storage inside each shelter.

8 Shelter staff shall provide closable plastic bags to clients for storage purposes. If storage
9 inside a shelter is unavailable, the shelter operator may provide free, ~~pest-free~~ storage off-site as long
10 as the off-site storage is available to the shelter client up until the time of evening bed check;

11 (16) provide shelter clients with access to electricity for charging their cell phones; and
12 other durable medical equipment for clients with disabilities;

13 (17) note in writing and post in a common area in the shelter when a maintenance problem
14 will be repaired; and note the status of the repair and ensure that all repairs are completed in one
15 business day;

16 (18) provide access to free local calls during non-sleeping hours; including TTY access
17 and amplified phones for clients who are deaf or hearing-impaired;

18 (19) provide a minimum of ~~three foot~~ distance between sleeping units; 22 inches
19 between the sides of sleeping units, excluding designated ADA-accessible sleeping units and
20 sleeping units separated by a wall;

21 (20) provide all printed materials produced by the City and shelters in English and Spanish;
22 and other languages upon request and ensure that all written communications are provided to
23 clients with sensory disabilities in alternate formats such as large print, Braille, etc. upon
24 request;

1 (21) communicate with each client in the client's primary language or provide professional
2 translation services; including but not limited to American Sign Language interpretation;
3 however, children or other clients may be asked to translate in emergency situations;

4 (22) provide at least one front line staff at each site that is bilingual in English and Spanish;

5 (23) ensure that each shelter has an emergency disaster plan that accommodates people
6 with disabilities and requires drills on a monthly basis and that, in consultation with the Mayor's
7 Office on Disability, includes specific evacuation devices and procedures for people with
8 disabilities;

9 (24) locate an alternative sleeping unit for a client who has been immediately denied shelter
10 services after 5:00 p.m., unless safety concerns exist the denial of service was for acts or threats
11 of violence;

12 (25) require all shelter staff to wear a badge that identifies the staff person by name and
13 position;

14 (26) ensure that all clients receive appropriate and ADA-compliant transportation
15 services, through bus tokens or other services, to attend medical appointments and other
16 essential services including but not limited to, permanent housing appointments, substance
17 abuse treatment, job-search appointments and job interviews, and mental health services; and
18 shelter services;

19 (27) provide public notification at least 24 hours in advance of on-site, community meetings;

20 (28) provide clients with access to free laundry services with hot water and a dryer; that
21 reaches a temperature between 120-130 degrees Fahrenheit, on or off site;

22 (29) to the extent not inconsistent with Proposition N, passed by the voters on
23 November 5, 2002, ensure that all single adult shelter reservations be for a minimum of 7
24 nights;

1 (30) agree to comply with the California Department of Industrial Relations, Division
 2 of Occupational Safety and Health (Cal-OSHA) General Industry Safety Orders regarding
 3 Bloodborne Pathogens (8 CCR 5193) and its Injury and Illness Prevention Program (8 CCR
 4 3203), including but not limited to applicable requirements regarding personal protective
 5 equipment, universal precautions, and the development of an exposure control plan, as
 6 defined therein, and

7 (31) in consultation with the San Francisco Department of Public Health, provide
 8 annual all-staff mandatory trainings, appropriate for each shelter position, that address Cal-
 9 OSHA regulatory requirements listed in subsection (30), above, as well as the following
 10 topics:

11 (i) hand washing requirements and other communicable disease prevention;

12 (ii) proper food handling and storage;

13 (iii) emergency procedures in case of disaster, fire, or other urgent health or
 14 safety risk, including but not limited to CPR requirements;

15 (iv) safe and appropriate intervention with violent or aggressive shelter
 16 clients, including training on the harm reduction model in dealing with substance abuse;

17 (v) safe and appropriate interaction with shelter clients who suffer from
 18 mental illness or substance abuse;

19 (vi) on-the-job burn-out prevention;

20 (vii) requirements under the ADA;

21 (viii) policies and procedures explained in shelter training manuals; and

22 (ix) cultural humility, including sensitivity training regarding homelessness;
 23 the lesbian, bisexual, gay, and transgender communities, people with visible and invisible
 24 disabilities, youth, women, and trauma victims.

1 (b) In addition, every contract covered by this Article shall contain a provision in which the
2 shelter operator agrees:

3 (1) to be liable to the City for liquidated damages as provided in this Article;

4 (2) to be subject to the procedures governing enforcement of breaches of contracts based on
5 violations of contract provisions required by this Article as set forth in this section;

6 (3) that the contractor's commitment to comply with contractual obligations that this Article
7 imposes is a material element of the City's consideration for this contract; that the failure of the
8 contractor to comply with such obligations will cause harm to the City and the public that is significant
9 and substantial but extremely difficult to quantify; and that the assessment of liquidated damages of up
10 to \$2,5001,250.00 made pursuant to the liquidated damages schedule referred to in section
11 20.406(b)(1) below for every unmitigated failure to comply with such obligations is a reasonable
12 amount of damages to redress the harm to the City caused by such obligations;

13 (4) that the failure of contractors to comply with contract provisions that this Article
14 requires may result in debarment and monetary penalties set forth in Sections 6.80 et seq. of the San
15 Francisco Administrative Code, as well as any other remedies available under the contract or at law;
16 and

17 (5) that in the event the City brings a civil action to recover liquidated damages for breach
18 of a contract provision required by this Article, and prevails, the prevailing party contractor will be
19 liable for the other party's City's costs and reasonable attorneys fees.

20 (c) The Board of Supervisors recognizes that these amendments will have a
21 material effect on the existing shelters whose contracts with the City require the City to pay
22 the shelter operators a certain negotiated amount for services offered at each shelter. The
23 City and the shelter operators contemplated that the shelters would operate at or near
24 capacity through most of the year. This legislation may reduce the number of beds available
25

1 in some shelters. In addition this legislation will impose obligations on shelter operators that
 2 exceed their obligations under their existing agreements with the City and therefore increase
 3 their operating costs. City officials and shelter operators based their budgetary assumptions
 4 and contracting decisions on factors that existed before this legislation existed. Therefore, the
 5 Board of Supervisors authorizes each City department overseeing contracts affected by this
 6 legislation to negotiate amendments to existing contracts to reflect these changes so long as
 7 current contract amounts are not reduced.

8 SEC.20.405. COMPLAINT PROCESS AND INVESTIGATION

9 (a) Each shelter shall provide client complaint forms in common areas of the shelter and
 10 shall make a complaint form available to a shelter client upon request. In addition, shelter staff must
 11 accept and investigate written client complaints from the Shelter Monitoring Committee. Shelter staff
 12 shall review and respond to written client complaints within 2 business days. Shelter staff shall make
 13 best efforts to take necessary corrective action in response to all client complaints internally within 5
 14 days. If the client is not satisfied with the response, the shelter operator shall refer the complaint to the
 15 contract monitor and to the Shelter Monitoring Committee. The Director overseeing the
 16 contract Shelter Monitoring Committee shall investigate these complaints within 10 days of receipt
 17 of the complaint and shall provide the shelter operator with an opportunity to respond to the
 18 allegations. The Shelter Monitoring Committee shall also forward the results of its
 19 investigation to the Director of the San Francisco Department of Public Health (DPH), or his or
 20 her designee, who shall comply with section 20.406(a) below.

21 (b) Each Director, in consultation with the Director of DPH, or his or her designee,
 22 shall promulgate appropriate guidelines or rules for the enforcement of the shelter operator's
 23 contractual obligations imposed pursuant to this Article. Such guidelines or rules may establish
 24 procedures for ensuring fair, efficient, and cost-effective implementation of these obligations, including
 25

mechanisms to monitor contractor compliance and to determine whether a contractor has failed to comply with its contract obligations set forth in section 20.404, above.

SEC. 20.406. CORRECTIVE ACTION PLAN, IMPOSITION OF LIQUIDATED DAMAGES

(a) Where the City Director of DPH, or his or her designee, after providing the contractor with the opportunity to respond to the alleged violation, determines that a contractor failed to comply with the provisions of this Article, the City Director of DPH, or his or her designee, shall provide written notice to the contractor and the contract monitor as follows:

(1) the factual basis for the determination;

(2) the corrective action plan that the contractor must take to remedy the violation;

(3) the amount of liquidated damages that the City department Director of DPH, or his or her designee, has assessed for the contractor's violation of this Article;

(4) notice that the contractor has 15 days to either follow the required corrective action plan, including payment of liquidated damages, or to file an appeal consistent with subsection (5), below;

(5) that the contractor has the right to appeal the City's Director of DPH, or his or her designee's final determination to the Director, including the assessment of liquidated damages and the amount assessed, to an arbitration panel appointed by the Director of DPH, but that the contractor must file any such appeal in writing with the Director arbitration panel within 15 days of the date of the issuance of the City's determination and that a contractor's failure to exhaust this administrative remedy will bar subsequent judicial action challenging the City's determination;

(6) that if the contractor fails to follow the corrective action plan or file an appeal in writing with the Director arbitration panel within 15 days as set forth above, the City's Director of DPH, or his or her designee's determination shall be the City's final and binding decision which the City may enforce in a court of law, and

1 (7) that the contractor must comply with the decision within 5 business days of the City's
 2 decision becoming final, including payment of liquidated damages, if any, together with simple annual
 3 interest of 10% from the date that payment should have been made.

4 (b)(1) While liquidated damages in the maximum amount set forth in this section are a
 5 reasonable estimate of harm to the City caused by the contractor's non-compliance with contract
 6 provisions required by this Article, the City Director of DPH, or his or her designee, may determine
 7 that less than the full amount is warranted depending on the circumstances of each case. The Director
 8 of Public Health, or his or her designee, shall adopt a schedule for liquidated damages based on the
 9 degree of harm that the violation causes, the number of days the violation occurs, and the number of
 10 shelter clients affected by the violation. In addition, the City Director of Public Health, or his or her
 11 designee, shall consider the following factors in determining the amount of liquidated damages, if
 12 any, to impose against a contractor who fails to comply with contract provisions required by this
 13 Article:

14 (A) the size of the contractor's business;

15 (B) the contractor's good faith efforts to comply with contract provisions required by
 16 this Article;

17 (C) the gravity of the violation;

18 (D) whether the contractor has a history of violations of contract provisions required
 19 by this Article;

20 (E) whether the contractor has failed to comply with recordkeeping requirements
 21 imposed by contract provisions under this Article; and

22 (F) whether the imposition of liquidated damages would undermine the purpose of
 23 this Article by imposing unreasonable financial burdens on the contractor, thereby imperiling the
 24 contractor's ability to continue complying with contract provisions required by this Article.

1 (c)(1) Within 15 days of receiving an appeal from the City's Director of Public Health, or his
 2 or her designee's final determination, the Director arbitration panel shall appoint a hearing officer
 3 and shall so inform the Shelter Monitoring Committee, the contract monitor, the shelter operator,
 4 the Director of DPH, or his or her designee, and/or their respective counsel or authorized
 5 representative. The arbitration panel may assign a hearing officer within the panel to collect
 6 and review evidence and to make recommendations to the full arbitration panel, but the full
 7 arbitration panel must issue written findings and orders consistent with subsection (4), below.

8 (2) The hearing officer arbitration panel shall promptly set a date for a hearing. The
 9 hearing must commence within 45 days of the notification of the appointment of the hearing
 10 officer of the appeal to the arbitration panel and conclude within 75 days of such notification, not
 11 including the issuance of a decision, unless all parties agree to an extended period. If a contractor
 12 appeals the City's Director of DPH, or his or her designee's initial determination but fails to attend
 13 a hearing set under this subsection, the City's Director of DPH, or his or her designee's initial
 14 determination shall become final.

15 (3) The City Director of DPH, or his or her designee, shall have the burden of
 16 producing evidence demonstrating the contractor's violation of contract provisions required by this
 17 Article and warranting imposition of liquidated damages. The contractor shall have the right to
 18 present evidence on its behalf in response to any alleged violation of contract provisions required by
 19 this Article.

20 (4) Within 30 days of the conclusion of the hearing, the hearing officer arbitration
 21 panel shall issue a written decision affirming, modifying, or vacating the City's determination relating
 22 to the violation of the contract obligations that this Article imposes, the corrective action that the
 23 contractor must take to remedy any violation, and the amount of liquidated damages to be assessed, if
 24
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1 any. The hearing officer's arbitration panel's decision shall consist of findings and a determination,
 2 which shall be the City's final decision.

3 (5) The contractor shall comply with the hearing officer's arbitration panel's decision,
 4 including the payment of liquidated damages, within 5 business days of service of the decision. Service
 5 shall be made by first class mail to the contractor's address of record. Failure to pay liquidated
 6 damages within the time specified in this ordinance shall result in interest on the unpaid damages at the
 7 simple annual interest rate of 10% from the day that such damages were due.

8 (6) The contractor may seek review of the hearing officer's arbitration panel's
 9 decision only by filing in the San Francisco Superior Court a petition for a writ of mandate under
 10 California Code of Civil Procedure, section 1094.5, as may be amended from time to time.

11 (7) When a contractor fails to take corrective action or pay damages within the time
 12 required by the provisions of this section, the City may immediately pursue all available remedies
 13 against the contractor for breach of contract, including debarment proceedings where applicable and
 14 filing a civil action to recover liquidated damages due under this Article.

15 (8) The failure of the City to comply with the time requirements of this section shall not
 16 cause the City or the hearing officer's arbitration panel to lose jurisdiction over an appeal from the
 17 City's determination filed under this section.

18 (d) Liquidated damages obtained pursuant to contract provisions required by this Article shall
 19 be deposited in the City's general fund.

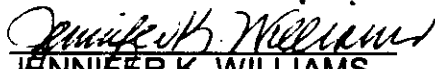
20 (e) Six months after the effective date of this ordinance, the Director of DPH shall
 21 provide a written report to the Board of Supervisors that shall address the following issues: the
 22 level of shelter compliance with this Chapter; the number of cases that have resulted in the
 23 imposition of liquidated damages; the number of cases that have been referred to an
 24 arbitration panel; and the financial impact of this Chapter, if any, on DPH.
 25

1 SEC. 20.407. SEVERABILITY. If any section, subsection, clause, phrase or portion of this
2 Article is for any reason held invalid or unconstitutional by any court or federal or State agency of
3 competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision
4 and such holding shall not affect the validity of the remaining portions thereof.

5 SEC. 20.408. LIMITED TO PROMOTION OF GENERAL WELFARE.

6 In undertaking the adoption and enforcement of this Article, the City and County of San
7 Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it
8 imposing on its commissions, departments, officers and employees, an obligation for breach of which it
9 is liable in money damages to any person who claims that such breach proximately caused injury.

10
11 APPROVED AS TO FORM:
12 DENNIS J. HERRERA, City Attorney

13 By: 
14 JENNIFER K. WILLIAMS
15 Deputy City Attorney
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City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

**Tails
Ordinance**

File Number: 071518

Date Passed:

Ordinance amending the San Francisco Administrative Code by adding a new Article 13 to Chapter 20 to: 1) mandate certain provisions in all contracts for City funded shelters, 2) require the City to take corrective enforcement measures against City-funded shelter contractors who fail to comply with contractual provisions that this Article requires; 3) require the Shelter Monitoring Committee to investigate complaints against City funded-shelters, and 4) require the Director of the Department of Public Health to determine if the imposition of liquidated damages is warranted against shelters who fail to comply with a corrective action plan.

March 18, 2008 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE
BEARING SAME TITLE

Ayes: 11 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell,
McGoldrick, Mirkarimi, Peskin, Sandoval

March 18, 2008 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

Ayes: 9 - Alioto-Pier, Ammiano, Daly, Dufty, Maxwell, McGoldrick, Mirkarimi,
Peskin, Sandoval

Noes: 2 - Chu, Elsbernd

March 25, 2008 Board of Supervisors — FINALLY PASSED

Ayes: 8 - Ammiano, Daly, Dufty, Maxwell, McGoldrick, Mirkarimi, Peskin,
Sandoval

Noes: 2 - Chu, Elsbernd

Absent: 1 - Alioto-Pier

File No. 071518

I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on March 25, 2008
by the Board of Supervisors of the City and
County of San Francisco.

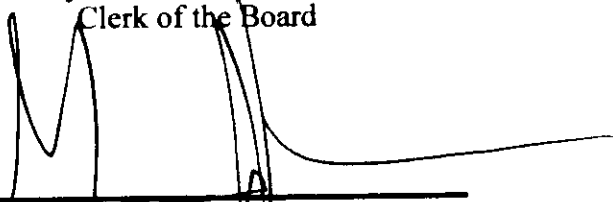
3.28.08

Date Approved



Angela Calvillo

Clerk of the Board



Mayor Gavin Newsom